

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case No. 09-553-EL-EEC
Edison Company for Approval of)	
Administrator Agreements and Statements)	
of Work.)	

ENTRY ON REHEARING

The Commission finds:

- (1) Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) On June 30, 2009, FirstEnergy filed an application for approval of six administrator agreements and statements of work pursuant to the stipulation approved by the Commission in its electric security plan proceeding, which includes provisions for recovery of reasonable administration fees through a rider on customer bills. *In re FirstEnergy*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (March 25, 2009) at 13. On August 28, 2009, FirstEnergy filed a second application for approval of four additional administrator agreements and statements of work.
- (3) On December 2, 2009, the Commission issued its Finding and Order in this proceeding, approving the applications as modified by the Commission.
- (4) On December 14, 2009, FirstEnergy filed an application for rehearing, alleging that the Finding and Order was unreasonable and unlawful because it fails to provide the findings of fact and written opinions setting forth the reasons prompting the decision arrived at, based upon the findings of fact, in violation of Section 4903.09, Revised Code.
- (5) Moreover, Industrial Energy Users-Ohio (IEU-Ohio) filed a motion for leave to file an application for rehearing and an application for

rehearing on December 14, 2009, alleging that the Finding and Order was unreasonable and unlawful because it failed to set forth the reasons for the modification of the application, in violation of Section 4903.09, Revised Code.

- (6) Further, The Ohio Manufacturers' Association and The Ohio Hospital Association (OMA/OHA) jointly filed an application for rehearing on December 17, 2009, alleging that the Finding and Order was unreasonable and unlawful because the Finding and Order disallows the per kilowatt-hour administration fee for energy efficiency projects implemented prior to January 1, 2009, without reason or justification.
- (7) On December 23, 2009, The Association of Independent Colleges and Universities of Ohio (AICUO) filed a motion for leave to file an application for rehearing and applications for rehearing, alleging that the Finding and Order was unreasonable and unlawful because the Finding and Order disallows the per kilowatt-hour administration fee without an accompanying analysis explaining its reasoning or justification.
- (8) Finally, the Ohio Schools Council (OSC) filed a motion for leave to file an application for rehearing and an application for rehearing on December 30, 2009, alleging that the Finding and Order was unreasonable and unlawful because the Finding and Order disallows the per kilowatt-hour administration fee without basis or justification.
- (9) On January 13, 2010, the Commission granted the applications for rehearing filed by FirstEnergy, IEU-Ohio, OMA/OHA, AICUO, and OSC for the purpose of further consideration of the matters specified in the applications for rehearing. In addition, the Commission held oral arguments on the matters specified in the applications for rehearing on January 20, 2010.
- (10) The Commission notes that Section 4928.66(A)(1)(a), Revised Code, requires electric utilities, beginning in 2009, to implement energy efficiency programs that achieve certain energy efficiency benchmarks specified in the statute. However, the statute provides a limited exception to the requirement that electric utilities implement energy efficiency programs beginning on January 1, 2009. Section 4928.66(A)(2)(c), Revised Code, states that "*existing or new*" energy efficiency measures that are customer-sited by

mercantile customers may be included in the calculations for determining compliance with the statutory benchmarks.

In our Finding and Order, the Commission approved the recovery by FirstEnergy of the per kWh administration fee to be paid to administrators for "new" projects (i.e., projects implemented after January 1, 2009). However, the Commission concluded that recovery by FirstEnergy of the per kWh administration fee for "existing" energy efficiency projects (i.e., projects implemented prior to January 1, 2009) was unreasonable. We further explained our basis for this decision in our January 13, 2010 Entry on Rehearing, where we stated that:

With respect to the Commission's finding that recovery of the per kWh administration fee for energy efficiency projects implemented prior to January 1, 2009, was unreasonable, the Commission notes that, when an administrator identifies and calculates the savings from such a project, the administrator is providing an accounting of existing savings from an already installed project, and the administrator's objective should be to provide an accurate accounting of the energy saved. The applications submitted in this proceeding did not demonstrate to the Commission that it would be reasonable for FirstEnergy to recover compensation paid to an administrator based directly on the results of the administrator's energy savings calculations. . . . With respect to future projects, on the other hand, it appeared reasonable to permit FirstEnergy to recover compensation paid on a per kWh basis because such compensation would facilitate the achievement of new energy savings as contemplated by Section 4928.66, Revised Code.

Entry on Rehearing (January 13, 2010) at 3.

- (11) During the oral arguments before the Commission, the parties seeking rehearing addressed the concerns raised by the Commission and clarified that the application did not seek a blanket approval of all compensation paid for projects completed before January 1, 2009. Instead, the parties seeking rehearing explained that, for all projects completed before January 1, 2009, FirstEnergy and the mercantile customer would seek specific

approval from the Commission of the mercantile customer's projects and that the compensation will not be paid unless the projects are approved by the Commission (Tr. at 9, 31, 78-79; Application, Exhibit 1). Thus, FirstEnergy would only pay, and be permitted to recover, the per kWh administration fee paid to the administrators for those projects that the Commission determined successfully achieved the expected energy savings (Tr. at 25, 59).

- (12) The Commission finds that the process outlined by the parties seeking rehearing will ensure that our Staff and other interested persons will have a full opportunity to review the energy savings calculations provided by the administrator and to determine if the projects successfully achieved the expected energy savings. This opportunity for further review of the projects, and the fact that compensation will be paid to administrators only if the projects are approved by the Commission, fully addresses the concerns raised by the Commission in our December 2, 2009, Finding and Order and January 13, 2010, Entry on Rehearing. Accordingly, the Commission will grant rehearing and modify our Finding and Order to permit recovery by FirstEnergy of the per kWh administration fee for energy efficiency projects implemented prior to January 1, 2009, provided that the projects for which compensation will be paid are contained in a joint application submitted to the Commission by FirstEnergy and the mercantile customer and provided that such application is approved by the Commission.

However, the Commission continues to be concerned that payment of the same compensation for existing mercantile customer programs as for new mercantile customer programs does not encourage new investments in energy efficiency as contemplated by Section 4928.66, Revised Code. On the other hand, we understand that the administrators have invested substantial time and effort in researching and preparing applications for existing mercantile customer programs in order to assist FirstEnergy in reaching its statutory energy efficiency benchmark. Therefore, we will limit our approval to existing mercantile customer programs which are filed with the Commission prior to the issuance of a final, appealable order in FirstEnergy's energy efficiency and peak demand program portfolio plan proceeding, currently pending before the Commission in Case No. 09-1947-EL-POR et al. The Commission encourages FirstEnergy and the administrators to work with Commission Staff to develop an alternative

compensation proposal for existing mercantile customer programs filed after the effective date of the program portfolio plan.

- (13) However, the Commission notes that our modification of the December 2, 2009, Finding and Order should not be interpreted as waiving any provision of Chapter 4901:1-39, Ohio Administrative Code, related to programs implemented by mercantile customers, or any provision of the protocols established by the Commission in Case No. 09-512-GE-UNC, with respect to the historic mercantile customer program or the customer-directed energy efficiency projects contained in the statements of work provided for the applications submitted in this proceeding.

It is, therefore,

ORDERED, That the applications for rehearing filed by FirstEnergy, IEU-Ohio, OMA/OHA, AICUO, and OSC be granted as set forth in Finding (12). It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO




Alan R. Schriber, Chairman



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GAP/dah

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Renee J. Jenkins
Secretary